

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PATRICK JAMES McLEMORE,

Petitioner,

vs.

CASE NO. 07-11340
HON. LAWRENCE P. ZATKOFF

THOMAS K. BELL,

Respondent.

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ORDER RE: CERTIFICATE OF APPEALABILITY

Petitioner has filed a Motion for Certificate of Appealability (Docket #29). In its Opinion and Order dated March 25, 2010, the Court denied Petitioner's petition for a writ of habeas corpus. Before Petitioner may appeal this Court's dispositive decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the

petitioner's claims. *Id.* at 336-37. The Court is required to set forth in this Order each of the issues that Petitioner raised in his habeas petition and state with specificity which issues it certifies for appeal. *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).

The Court has reviewed and considered each of the issues raised by Petitioner in light of the foregoing standards and the Court concludes as follows with respect to each such issue:

- I. The state trial court violated Petitioner's constitutional rights to due process and a fair trial where it gave instructions that did not adequately instruct the jury on the law to be applied during deliberations.

A certificate of appealability **is** warranted on this issue.

- II. The state court prosecutor's repeated misconduct was so egregious that it wholly undermined the trial, rendered the verdict unreliable, and deprived Petitioner of due process and an impartial trial by jury as guaranteed by the fifth and fourteenth amendment to the federal constitution.

A certificate of appealability **is not** warranted on this issue.

- III. Petitioner McLemore was denied his right to a fair trial under the due process clauses of the fifth and fourteenth amendments by the state trial court's exclusion of testimony by Blake Copeland that a codefendant had admitted to acts that corroborated the defense theory.

A certificate of appealability **is not** warranted on this issue.

- IV. Petitioner McLemore was denied his right to a fair trial and an impartial jury where it was revealed after trial that the jury engaged in premature deliberations.

A certificate of appealability **is not** warranted on this issue.

- V. A series of actions and omissions by Petitioner's trial counsel violated Petitioner's sixth amendment right to the effective assistance of counsel.

A certificate of appealability **is** warranted on this issue.

VI. Petitioner is entitled to habeas relief because he was denied his right to the effective assistance of counsel on his direct appeal.

A certificate of appealability **is** warranted on this issue.

Accordingly, the Court GRANTS IN PART and DENIES IN PART Petitioner's Motion for Certificate of Appealability (Docket #29).

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: May 19, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on May 19, 2010.

s/Marie E. Verlinde

Case Manager
(810) 984-3290